

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

GREGORY RICE,

Petitioner,

v.

Case No. 06-cv-11610
Honorable Denise Page Hood

JEFF WHITE,

Respondent.

ORDER DEEMING MOOT PETITIONER'S MOTION FOR IMMEDIATE RELEASE

Now before the Court is Gregory Rice's Motion for Immediate Release. The Court issued an Opinion and Order on September 25, 2012 taking the motion under advisement, referring the matter to Pretrial Services for investigation and recommendation, and directing Respondent to file a brief assessing the factors set forth by the United States Supreme Court in *Hilton v. Braunskill*, 481 U.S. 770 (1987). Pretrial Services conducted an investigation and provided the Court with a recommendation on October 17, 2012. Respondent filed a brief on October 25, 2012.

The district court maintains jurisdiction while a matter is pending on appeal to enter a stay or set bail. Fed. R. App. P. 23(c). Rule 23(c) creates a presumption of release for a prisoner granted habeas relief. *Hilton*, 481 U.S. at 774. This presumption controls unless the court determines that the factors governing a stay weigh against release. *Id.* At 776. These factors are:

1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies .

Id. at 776. The Court "must also consider whether the petitioner poses a risk of flight, the potential danger to the public if [h]e is released, and '[t]he State's interest in continuing custody and

rehabilitation.” *Miller v. Stovall*, 641 F.Supp.2d 657 (E.D. Mich. 2009) (quoting *Hilton*, 481 U.S. at 777)).

On September 26, 2012, the Wayne County Circuit Court vacated Rice’s conviction and sentence. The Michigan Department of Corrections released Rice to the custody of the Wayne County Sheriff on October 9, 2012. He is now a detainee with the Wayne County Jail awaiting pre-trial hearing. The Michigan Department of Corrections issued a Certificate of Discharge on October 19, 2012. The *Hilton* factors govern whether a prisoner should be immediately released pending appeal of a grant of habeas relief. These factors are no longer applicable to Rice; his sentence was discharged and he was released from the custody of the Michigan Department of Corrections. He is now awaiting trial as a pre-trial detainee.

Accordingly,

IT IS ORDERED that Petitioner’s Motion for Immediate Release [Docket No. 56, filed June 15, 2012] is deemed **MOOT**.

IT IS SO ORDERED.

S/Denise Page Hood
Denise Page Hood
United States District Judge

Dated: November 20, 2012

I hereby certify that a copy of the foregoing document was served upon Gregory Rice #296423, 525 Clinton Street, Detroit, MI 48226 and counsel of record on November 20, 2012, by electronic and/or ordinary mail.

S/LaShawn R. Saulsberry
Case Manager